

HOUSE BILL REPORT

HB 1039

As Reported by House Committee On:
Public Safety & Emergency Preparedness

Title: An act relating to establishing a statewide CBRNE response program.

Brief Description: Establishing a statewide CBRNE response program.

Sponsors: Representatives Driscoll, Ericks, Haler, Seaquist, Simpson, Conway, Hurst, Haigh, Goodman, O'Brien, Morrell, Kelley, Wood, Kenney, Hunt and White.

Brief History:

Committee Activity:

Public Safety & Emergency Preparedness: 1/14/09, 2/11/09 [DPS].

Brief Summary of Substitute Bill

- Creates a statewide chemical, biological, radioactive, nuclear, or explosive (CBRNE) Incident Response Program (program) in two phases.
- Divides the state into CBRNE response regions and establishes regional teams to respond to CBRNE incidents.
- Standardizes training, equipment, and procedures for CBRNE responders.
- Establishes procedures for recovering response costs from those responsible for causing a CBRNE incident.
- Creates a CBRNE Account (Account) containing funding recovered from CBRNE cost reimbursements, grants, and any other funding that is transferred to the Account by the Legislature.
- Appropriates \$1.2 million from the Local Toxics Control Account to the Washington State Patrol for purposes of implementing the first phase of the CBRNE program.

HOUSE COMMITTEE ON PUBLIC SAFETY & EMERGENCY PREPAREDNESS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 5 members: Representatives Hurst, Chair; O'Brien, Vice Chair; Appleton, Goodman and Kirby.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Minority Report: Do not pass. Signed by 3 members: Representatives Pearson, Ranking Minority Member; Klippert, Assistant Ranking Minority Member; Ross.

Staff: Yvonne Walker (786-7841)

Background:

Various state and local governmental entities in Washington are involved in emergency management and preparedness.

The Emergency Management Division.

The Emergency Management Division of the Washington Military Department administers emergency management and disaster relief programs. The Director of the Military Department (Director) is appointed by the Governor and is required to develop a comprehensive emergency management plan including an analysis of the natural, technological, or human-caused hazards that could affect the state. Local jurisdictions are directed to establish comprehensive local emergency management plans, and submit their plans to the Director for recommendations. Local jurisdictions may also establish and operate joint local emergency management organizations.

The Emergency Management Council.

The Emergency Management Council (Council) is a 17-member Council appointed by the Governor to advise the Governor and the Director on state and local emergency management matters. The Council includes representatives from various state and local agencies as well as emergency medical personnel and private industry. Among other duties, the Council must ensure the Governor receives an annual assessment of statewide emergency preparedness.

In the event of a disaster beyond local control, the Governor, through the Director, may assume operational control over all or any part of emergency management functions in the state. In addition to using state and local agencies and employees for emergency response, the Governor and the chief executives or emergency management directors of counties, cities, and towns have authority to press citizens into emergency management service if the Governor proclaims a disaster.

The Washington State Emergency Response Commission.

The Washington State Emergency Response Commission (SERC) was created in accordance with a federal law that establishes requirements for federal, state and local governments, and private industry regarding emergency response planning. The membership of the SERC includes representatives from private industry, state and local agencies. Among other purposes, the SERC designates and oversees local emergency planning districts or committees and facilitates preparation and implementation of emergency planning and preparedness.

The Washington State Patrol Fire Protection Bureau.

The Washington State Patrol Fire Protection Bureau provides training to first responders on hazardous material incidents and is the Incident Command Agency if an incident occurs along any state route or interstate freeway. The Terrorism Unit offers training and information regarding terrorism response and extremist groups. The training is meant for all

first responders, but the Terrorism Unit also provides information to agencies and people on these topics.

Funding.

In 1988 the citizens of Washington created by initiative the Model Toxics Control Act (MTCA). The primary purpose of the MTCA is to raise sufficient funds to clean up all hazardous waste sites and to prevent the creation of future hazards due to improper disposal of toxic wastes into the state's land and waters.

The MTCA includes a tax on the wholesale value of hazardous substances. There are over 8,000 different substances, including petroleum products, pesticides and certain chemicals. Of the total tax receipts, 47.1 percent is allocated to the State Toxics Control Account (STCA) for clean up of hazardous waste sites and related planning and regulation activities. The remaining 52.9 percent of the revenues go to the Local Toxics Control Account (LTCA) for use as grants or loans to local governments for hazardous and solid waste programs and for clean up of hazardous waste sites.

Summary of Substitute Bill:

The Director of Fire Protection (DFP) in the Washington State Patrol must establish and maintain a statewide chemical, biological, radioactive, nuclear, or explosive (CBRNE) Incident Response Program (program).

The CBRNE Program.

A CBRNE agent is a chemical, biological, radioactive, nuclear, or explosive agent. A CBRNE incident is an incident creating a danger to persons, property, or the environment as a result of spillage, seepage, fire, explosion, or release of a CBRNE agent.

The CBRNE program must be established in two phases. The first phase of the CBRNE program requires the DFP to design the infrastructure of the CBRNE program, adopt any rules necessary for implementing the CBRNE program, and analyze the costs associated with operating and sustaining the CBRNE program. The second phase of the program requires the DFP to fully implement the CBRNE program, procure any needed equipment for the CBRNE program, implement the cost recovery program, and monitor the effectiveness of the CBRNE program.

The DFP must establish an overall CBRNE program that:

- divides Washington into five CBRNE response regions;
- establishes one regional hazmat team and one regional bomb team within each response region to respond to CBRNE incidents within their regions and outside their regions when necessary;
- standardizes training, equipment, and procedures for regional teams and others;
- establishes procedures for reimbursing regional teams for costs incurred in approved responses; and
- establishes procedures for recovering response costs from parties responsible for causing a CBRNE incident.

When dividing the state into CBRNE response regions, the DFP should consider:

- the history of any CBRNE or hazardous materials incident locations throughout the state;
- the current geographical distribution of CBRNE or hazardous materials responders; and
- any existing regional divisions in the state.

The primary duty of a regional response team is to stabilize a CBRNE incident. The response teams' duties do not require providing perimeter security or, except as may be incidentally necessary, transporting, storing, disposing, or cleaning up CBRNE agents.

Two Advisory Groups.

A policy advisory group and an operations advisory group are created to assist the DFP in implementing and managing the CBRNE program. The policy advisory group advises the DFP on the budget, staffing, policy and other management-related issues of the CBRNE program. This policy advisory group consists of the following six members appointed by the DFP:

- two members nominated by and representing the Washington Association of Sheriffs and Police Chiefs;
- two members nominated by and representing the Washington State Fire Chiefs Association;
- one member nominated by and representing the Washington State Emergency Management Council; and
- one member representing the DFP's office.

The operations advisory group advises the DFP on the technical and operational issues, including the training, equipment, response, and performance standards needed for the CBRNE program. This group consists of two voting members from each of the CBRNE response regions representing the contracting units of local government and one non-voting member from each of the following state agencies: the Department of Ecology, the Department of Health, the Department of Transportation, the Washington State Patrol, the Military Department, and the Emergency Management Division of the Military Department. In addition, the DFP must seek the appointment of one tribal nation representative and two private sector representatives.

If a unit of local government requests the assistance of a regional response team, then that respective unit of local government must provide the response team with geographical and topological site-specific information, any necessary on-site security, and any logistical support that the team reasonably requests.

Funding.

A CBRNE Account (Account) is established under the custody of the State Treasury. The Account contains funding recovered from CBRNE cost reimbursements, grants, and other funding that is transferred to the Account by the Legislature.

In instances where a specific person is responsible for a CBRNE incident, the DFP may notify that person by appropriate order. If the responsible person does not pay within 30

days of receiving the order, the Office of the Attorney General will bring an action in superior court to collect the amount.

The DFP must actively seek public and private grants to fund the CBRNE program.

A total of \$1.2 million is appropriated from the LTCA to the Washington State Patrol for purposes of implementing the first phase of the CBRNE program. During the second phase of implementing the CBRNE program, the State Treasurer must transfer such funds as may be necessary from the LTCA or from another source identified during phase one, to the statewide CBRNE Account for the full implementation and operation of the statewide CBRNE program.

Substitute Bill Compared to Original Bill:

The substitute bill requires that the CBRNE program be developed and established in two phases.

Phase 1 requires:

- the State Treasury to transfer funds from the LTCA to the CBRNE Account for the design and development phase of the CBRNE program; and
- the DFP to hire the staff necessary to design the infrastructure of the CBRNE program; create and adopt any rules necessary for implementing the CBRNE program; establish the Policy and Operations Advisory groups; and analyze and identify the costs associated with operating and sustaining the CBRNE program.

Phase 2 requires:

- the State Treasury to transfer funds from the LTCA to the CBRNE Account for the full implementation of the program; and
- the DFP to fully implement and administer the CBRNE program, procure any needed equipment for the CBRNE program, implement the cost recovery program, and monitor the effectiveness of the program.

A total of \$1.2 million is appropriated from the LTCA to the Washington State Patrol for purposes of implementing phase one of the CBRNE program. During the second phase of implementing the CBRNE program, the State Treasurer must transfer such funds as may be necessary from the LTCA, or from another source identified during phase one, to the statewide CBRNE Account for the full implementation and operation of the statewide CBRNE program.

Appropriation: The sum of \$1.2 million is appropriated from the LTCA to the Washington State Patrol for purposes of implementing phase one of the CBRNE program.

Fiscal Note: Available.

Effective Date of Substitute Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) This bill will allow for emergency response teams to fill in public safety gaps around the state for toxic and hazmat incidents on a daily basis. The existing teams are currently underfunded and they cannot operate outside of their jurisdictions. If a major incident were to take place there would be mass confusion.

There have been 4,251 incidents taking place in the state since 1998. Responding to emergencies is critical to our state. There are some bomb squads located in Washington but they are not located in every part of the state. It is understandable that the budgetary concerns for Washington this year is critical but the Governor's Washington State Emergency Management Council believes this CBRNE bill and public safety is a top priority.

In 2007 the Legislature required the Washington State Emergency Management Council to review and make recommendations about the governance of the CBRNE Incident Response Program and its associated funding. The CBRNE program would be a perfect match to the LTCA since the purpose of the LTCA is to be used for training, personnel, and hazardous materials mitigation. In 2008 the LTCA generated about \$71 million with about \$46 million in expenditures. There have been unexpended funds in the LTCA since its existence.

(Opposed) The LTCA gets most of its revenue from crude oil. The LTCA is very volatile due to the economy. To date about 50 percent of the sites have been cleaned up. That still leaves the other 50 percent of the sites in the state to be cleaned up. Many of these sites can take many years to clean up so that is why there may not be money in the LTCA at any one time because the money has already been dedicated to the continual clean up of sites in out years.

Competing for the finite funding in this LTCA will endanger the primary source of this LTCA which is to fund clean up of toxic sites. The fund is already fully subscribed to pay for large scale multi-year construction projects and environmental clean up.

Counties are supportive of the concept of the CBRNE program but they are not supportive of the use of the LTCA as a funding source. There is never enough funding for first responders.

To divert 10 percent of the fund to the CBRNE Account is unacceptable and alternative funding sources should be reviewed and taken into consideration.

Persons Testifying: (In support) Representative Driscoll, prime sponsor; Don Bivins and Mike Brown, Washington Association of Fire Chiefs; and Jim Scharf, Governor's Emergency Management Committee.

(Opposed) Greg Harum, Western States Petroleum Association; Johan Hellman, Washington Public Ports Association; Tammy Fellin, Association of Washington Cities; Bruce Wishart, People for Puget Sound.

Persons Signed In To Testify But Not Testifying: None.